

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JERRY PROFFITT,

Petitioner,

v.

JOE LIZARRAG, Warden,

Respondent.

No. 2:20-cv-00667 KJM GGH P

ORDER

Petitioner has requested the appointment of counsel. There currently exists no absolute right to appointment of counsel in habeas proceedings. See Nevius v. Sumner, 105 F.3d 453, 460 (9th Cir. 1996). However, 18 U.S.C. § 3006A authorizes the appointment of counsel at any stage of the case “if the interests of justice so require.” See Rule 8(c), Fed. R. Governing § 2254 Cases. In the present case, the court does not find that the interests of justice would be served by the appointment of counsel at the present time.

In addition, petitioner has requested discovery in the form of an evidentiary hearing and subpoenas. ECF No. 13. “A habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course.” Bracy v. Gramley, 520 U.S. 899, 904, 117 S. Ct. 1793, 1796–97, 138 L. Ed. 2d 97 (1997). Rule 6 of the Rules Governing § 2254 Cases provides discovery, at the court’s discretion, and upon a showing of good cause. Id. However, here, discovery would not be appropriate given this action is successive and has been

1 recommended to be dismissed without prejudice to its re-filing upon obtaining authorization from
2 the United States Court of Appeals for the Ninth Circuit.

3 Accordingly, IT IS HEREBY ORDERED that:

4 1. Petitioner's motion for appointment of counsel (ECF No. 15) is denied without
5 prejudice; and

6 2. Petitioner motion for pre-trial hearing (ECF No. 13) is denied.

7 Dated: June 10, 2020

8 /s/ Gregory G. Hollows

9 UNITED STATES MAGISTRATE JUDGE
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